

### **Remarks**

Claims 1-16 and 18-21 are presented herewith. Claims 1-13 have been indicated as formally allowable.

Claims 17 and 18 were conditionally allowed and applicant has cancelled Claim 17 and replaced it with new independent Claim 21 that incorporates all of the subject matter of original Claims 14, 15, 16 and 17 to thereby meet the condition for allowance and thereby render new Claim 21 formally allowable. The dependency of original Claim 18 has been amended to depend Claim 18 from newly submitted independent Claim 21. Accordingly, it is respectfully submitted that Claims 18 and 21 may also now properly be formally allowed.

Claims 14-16 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by Coulter et al patent 4,202,145. Applicant has carefully considered the Examiner's comments and the Coulter et al patent and notes that the Coulter et al patent structure does not relate to the type of "stem" foundation wall for the construction of which applicant's structure is designed which requires the spaced opposition of two generally parallel form members between which wet concrete is poured and which must be kept from separating during the pour. In Coulter et al, the wall members 10 enclose a defined area into which concrete is poured to form a floor having a predetermined depth and a predetermined outer periphery forming the outer limits of the floor. This arrangement is illustrated in Coulter et al in FIG. 1 of the patent. It should also be noted that the stake 22 of Coulter et al is not associated with another stake between which stakes there extends a retention plate superimposed over parallel laterally spaced form members. The reason for this is that in

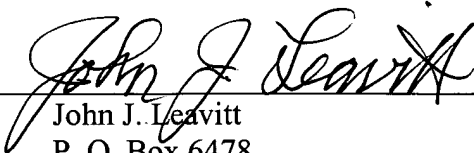
Coulter et al the stake 22 is buried in concrete and is remains therein when the concrete hardens. The projections 24 of Coulter et al engage the slots 28 in the metal form member 10 and remain buried in the hardened concrete as do the laterally extending members 26 which engage the side walls but which do not engage the stakes. Accordingly, it is applicant's contention that the structure and function of the Coulter et al structure is to accomplish a different purpose than applicant's structure. However, in the interest of advancing the prosecution of these claims to allowance, applicant has amended Claims 14, 15 and 16 to clearly and specifically patentably differentiate applicant's structure from the Coulter et al structure. Accordingly, applicant respectfully requests reconsideration of these claims.

Claims 14-16, 19 and 20 were rejected under 35 U.S.C. 102(b) as being anticipated by Peden. Applicant has carefully noted the Examiner's comments regarding the proposed applicability of applicant's claims to the Peden patent structure and has carefully examined the Peden patent to determine its structure and function and the cooperative relationship between the preformed plate 12 and the outer struts 28. Properly interpreted, the outer struts 28 of Peden do not retain the form boards from spreading as do applicant's stakes 2 connected by applicant's transversely extending plate 32. In Peden, the form boards B are prevented from spreading solely by the preformed plate 12 that is provided with laterally spaced channels within which the form boards B are inserted and retained by application of the screw 39 through the outer walls of the channels to prevent the plate 12 from lifting off the form boards B. The sole function of the angled outer struts is to prevent the forms, once assembled, from **tipping laterally** by some force that is not defined. As stated in the Peden specification in the 8<sup>th</sup> paragraph of the SUMMARY OF THE INVENTION section, "Accordingly, it is a principal object of the invention to provide a brace securing a vertical

concrete form in solid, vertical orientation, resisting collapse in two directions." (Underlining added for emphasis.) Clearly, the cooperative relationship of applicant's parallel laterally spaced stakes that abut the outer surface of the form boards and to which the opposite ends of the transversely extending flat plate are detachably secured is significantly different structurally and functionally from the cooperative relationship of the Peden channeled plate 12 that directly engages the upper extremities of the form boards and retains them against spreading and the angled outer strut members that engage the plate on opposite sides thereof and function merely to prevent the form from tipping from a vertical orientation. However, in the interest of advancing the prosecution of the application to formal allowance of the rejected claims, applicant has amended these claims to more specifically differentiate patentably from the Peden reference patent. Accordingly, the claims are believed to clearly distinguish over the references, and favorable action is respectfully solicited.

Respectfully submitted,

Robert Rascon

By   
John J. Leavitt  
P. O. Box 6478  
San Jose, CA 95150-6478

Telephone: (408) 264-4514  
Facsimile : (408) 264-5112